

Hon. John C. Coughenour

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

BERNADEAN RITTMANN, et al,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC. and AMAZON
LOGISTICS, INC.,

Defendants.

Case No. 2:16-cv-01554-JCC

**PLAINTIFFS' MOTION TO LIFT THE
STAY**

NOTE ON MOTION CALENDAR:
FEBRUARY 1, 2019

1 In light of the Supreme Court's ruling today in New Prime v. Oliveira, No. 17-
 2 340 (Jan. 15, 2019), Plaintiffs respectfully urge the Court to lift the stay entered by the
 3 Court almost two years ago (on March 22, 2017) and allow this case at last to
 4 proceed.

5
 6 The Court initially stayed this case to await guidance from the Supreme Court
 7 in Ernst & Young, LLP v. Morris (U.S. Jan. 13, 2017) (No. 16-1300), regarding the
 8 enforceability of class action waivers in employment arbitration agreements, as well as
 9 to receive guidance from the Ninth Circuit in Van Dusen v. Swift Transp. Co., No. 17-
 10 15102 (9th Cir. Jan. 20, 2017) ("Swift"), regarding the proper determination of whether
 11 transportation workers work under "contracts of employment" and thus would be
 12 exempt from the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1. See Dkt. 77.¹ The
 13 Supreme Court issued its decision regarding class action waivers in employment
 14 agreements in May 2018², and now, the Swift appeal has been rendered moot by
 15 today's decision in New Prime.

16
 17 In New Prime, the Supreme Court held that courts need not make a preliminary
 18 decision as to whether plaintiffs are employees or independent contractors in order to
 19 determine whether they fall under the transportation worker exemption of the FAA.
 20 Instead, the Supreme Court held that the exemption applies to all transportation
 21 workers, regardless of whether they are employees or independent contractors. Thus,
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 23

24
 25 ¹ Section 1 of the FAA states: "[N]othing herein contained shall apply to contracts
 26 of employment of seamen, railroad employees, or any other class of workers engaged
 27 in foreign or interstate commerce." See 9 U.S.C. § 1.

28 ² On May 21, 2018, the Supreme Court issued its decision in Morris and two
 other consolidated cases, holding that class action waivers in employment agreements
 do not violate the National Labor Relations Act ("NLRA"), 29 U.S.C. § 157 *et seq.* See
Epic Sys. Corp. v. Lewis, No. 16-285, 2018 WL 2292444, at *1 (U.S. May 21, 2018).

1 the Swift appeal, which concerned the proper way for courts to make the preliminary
 2 determination regarding transportation workers' employment status, is no longer
 3 relevant because no such preliminary determination is necessary after New Prime.³
 4

5 As this Court previously noted, the Ninth Circuit stayed the Swift case pending
 6 the Supreme Court's decision in New Prime v. Oliveira, No. 17-340 (Feb. 26, 2018),
 7 because it recognized that this decision could very well be dispositive of the Swift
 8 appeal. See Dkt. 98 at n. 1. Now, the Supreme Court has issued its decision and has
 9 ruled that "[w]hen Congress enacted the Arbitration Act in 1925, the term 'contracts of
 10 employment' referred to agreements to perform work", including independent
 11 contractor agreements, rather than just contracts between what would now be
 12 considered employers and employees. See Exhibit A at 15. As such, the plaintiff fell
 13 within Section 1's transportation worker exemption regardless of whether he was
 14 actually an employee or an independent contractor. Id.⁴
 15
 16

17 In light of this guidance from the United States Supreme Court, the stay in this
 18 case should now be lifted. The Court should proceed to determine the applicability of
 19 the transportation worker exemption to the Amazon drivers.
 20

21 And for reasons set forth in their motion filed on October 27, 2016, Plaintiffs
 22 respectfully request that the Court now consider and grant Plaintiffs' request for
 23

24 ³ The thrust of the Swift appeal is that the District Court in that case "got it wrong"
 25 in preliminarily deciding that the workers in that case were employees operating under
 26 a "contract of employment" for purposes of determining the applicability of the
 27 transportation worker exemption under Section 1 of the FAA.

28 ⁴ In New Prime, the Supreme Court also ruled that the applicability of the
 transportation worker exemption is a question for a court to decide, not an arbitrator,
 regardless of whether the contract contains a delegation clause that purports to
 delegate all issues to the arbitrator. See Exhibit A at 4-5.

1 issuance of notice to Amazon drivers who may choose to opt-in to the FLSA claims in
2 this case (Dkt. 20) and that the Court deny Amazon's request to compel arbitration of
3 Plaintiffs' claims (Dkt. 36) because Plaintiffs fall under the transportation worker
4 exemption to the FAA.⁵

6 Dated: January 15, 2019

Respectfully submitted,

8 BERNADEAN RITTMANN et al, individually
9 and on behalf of all others similarly situated,

10 By their attorneys,

11 /s/ Shannon Liss-Riordan

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22 ⁵ The Court previously granted in part Defendant's Motion to Dismiss and
23 dismissed several of Plaintiffs' claims without prejudice with leave to amend. See Dkt.
24 No. 76. The Court also stayed consideration of Plaintiffs' Motion to Authorize Notice
25 "until such a time that the claims and issues are more definite," and it stayed the case,
26 deferring any ruling on Defendant's request to compel arbitration until after a decision
27 in Morris and Swift. See Dkt. No. 76 at 7. Plaintiffs then filed a Second Amended
28 Complaint (Dkt. No. 83), which addressed the concerns the Court identified in its
Court's Order on Defendant's Motion to Dismiss. Now that the complaint has been
amended and the appellate issues that this Court was waiting to be resolved have
been resolved, Plaintiffs request that the Court proceed to consider Plaintiffs' Motion to
Authorize Notice.

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CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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and I hereby certify that there are no parties receiving this notice via US Mail.
DATED this 15th day of January, 2019

/s/ Shannon Liss-Riordan
Shannon Liss-Riordan, Esq.